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State of New Hampshire
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in opinion

October 27, 1955

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CONCORD, N.H.

Brig. Gen. John Jacobson, Jr.
The Adjutant General
State Military Reservation
Concord, New Hampshire

Dear General Jacobson:

I have before me several cases with respect to the Korean bonus which you have submitted to us and upon which you ask our opinion. The cases are substantially similar, and they raise the question of entitlement to the bonus under circumstances broadly stated as follows. A resident of this State, the term "resident" having the meaning prescribed in the statute, Laws 1955, c. 286, s. 4, dies while in active service as a member of the armed forces of the United States at sometime during the period from June 25, 1950 to July 27, 1953. He is survived by his spouse, and also by his children and his parents. After the decease of the resident, the spouse remarries. Thereafter he or she makes application to you. Your inquiry is whether or not such applicant is eligible to receive payment. We answer in the negative.

The statute is designed to provide a certain monetary benefit to or with respect to residents of the State who served in the armed forces during the period described. If the resident die while in such active service the sum of \$100.00 is payable without regard to the length of time he served before his death.

The statute provides, generally, that if the resident himself be dead, payment of the bonus shall be made

"to such resident's surviving spouse or if none, to his child or children in equal shares; and if he has no surviving spouse or children, then in equal shares to his surviving parents . . ." s. 4.

Other provisions in the same section explain that a step-child is

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Brig. Gen. John Jacobson, Jr.

- 2 -

October 27, 1955

within the category of "child;" and step-parents and adoptive parents are included within the term "parent" as well as are persons who stood in loco parentis to the deceased.

The provisions governing the order of payment demonstrate that eligibility is entirely personal. Until the funds are paid, no one has a vested right to them. The death of an applicant before receipt of payment revokes eligibility; in such case the funds do not accrue to the applicant's estate. By law they become payable to someone else upon application - assuming that there is someone else within the eligible classes in existence.

Thus, to be alive at the time payment is made or to be made is one of the requisites of eligibility. Another is to occupy an eligible status as prescribed by law with no other person enjoying a status more preferred. With respect to an applicant who was once married to the resident, such applicant in order to be eligible must occupy the status of surviving spouse - again at the time payment is made or to be made. The word spouse, the statute provides (s. 4) means "a lawful wife or husband."

The inquiry with respect to such person, consistently with the foregoing, must be whether the applicant at the time payment is made or to be made is in fact the surviving spouse of the deceased resident. That is, recognizing that for the purposes of eligibility for the bonus the death of the resident is not to be held as terminating the marriage as is ordinarily the case, see e.g. 35 Am. Jur., Marriage, s. 7, has or has not anything else occurred which would affect the applicant's status as a spouse.

It is so universally understood and accepted as to require no citation that one person cannot at the same time be a lawful wife or husband of two individuals. Thus, while as noted, it is the legislative purpose that the status of spouse shall endure for the purpose of the bonus beyond the resident's death, there is no suggestion that such status shall survive the applicant's remarriage.

It is our opinion, then, that an applicant who was at one time the spouse of a resident who died in service, but who at the time payment of the bonus is made or to be made is married to another person, is not the surviving spouse of the resident within the meaning of the law and hence is not entitled to the bonus. In such case eligibility has passed to the person or persons next in line under the statutory plan.

Your files are returned.

Very truly yours,

Warren E. Waters
Deputy Attorney General

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